

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

LARRY HENRY, individually and on)	
behalf of all others similarly situated,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 20-553
)	District Judge Nora Barry Fischer
)	Magistrate Judge Patricia L. Dodge
CNX RESOURCES CORP.,)	
)	
Defendant.)	
)	

MEMORANDUM ORDER

This class and collective action suit under the Fair Labor Standards Act, 29 U.S.C § 201 *et seq.*, and the Pennsylvania Minimum Wage Act, 43 Pa. Stat. Ann. § 333.104, was commenced on April 15, 2020 (Docket No. 1), and was referred to United States Magistrate Judge Patricia L. Dodge for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1) and Rule 72 of the Local Rules for Magistrate Judges. Defendant filed a Motion to Compel Arbitration and a separate Motion to Dismiss on May 26, 2020. (Docket Nos. 20-21).

The Magistrate Judge's Report and Recommendation filed on August 24, 2020, recommended that the motion to compel arbitration be granted, the action be stayed pending the outcome of said arbitration, and the motion to dismiss be denied, without prejudice. (Docket No. 37). Service was made on all counsel of record. The parties were informed that in accordance with the Federal Magistrates Act, 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(2), that they had fourteen days from the date of service to file written objections to the report and recommendation. (Docket No. 37 at 12). Plaintiff filed objections on September 8, 2020. (Docket No. 38). Defendant responded on September 22, 2020. (Docket No. 39).

Plaintiff's filing of timely objections requires the Court to "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. §§ 636(b)(1); FED. R. CIV. P. 72(b)(3); *Sample v. Diecks*, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989). In doing so, the Court may accept, reject, or modify, in whole or in part, the findings and recommendations contained in the report. 28 U.S.C. §§ 636(b)(1)(C). This Court has reviewed the Plaintiff's objections and Defendant's response together with the Report and Recommendation and the arguments Plaintiff made in opposition to the instant motions, and the Court having recently addressed a similar legal issue in *Berryman v. Newalta Environmental Services, Inc.*, Civ. Action No. 18-793, 2018 WL 5723290 (W.D. Pa. Nov. 1, 2018), the following Order is entered:

AND NOW, this 7th day of October, 2020,

IT IS HEREBY ORDERED that the Report and Recommendation (Docket No. [37]) of Magistrate Judge Patricia L. Dodge dated August 24, 2020, is adopted as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendant's Motion to Compel Arbitration (Docket No. [20]), is GRANTED. Plaintiff is ORDERED to arbitrate against Defendant. The parties shall advise the Court of any arbitration award at which time the Court will consider whether the matter should be reopened.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss (Docket No. [21]), is DENIED, WITHOUT PREJUDICE. The above captioned case is STAYED, and the clerk shall mark the case ADMINISTRATIVELY CLOSED.

s/ Nora Barry Fischer
Nora Barry Fischer, Senior U.S. District Judge

cc/ecf: Magistrate Judge Patricia L. Dodge
All counsel of record